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No. 96-1764

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

MARSHALL SPIEGEL and CAROL SPIEGEL,

Petitioners,

v.

HOLLYWOOD TOWERS CONDOMINIUM ASSOCIATION and RAYMOND J., BONITA, & M. DES ROSIERS,

Respondents.

On Petition for Writ of Certiorari to the Illinois Supreme Court

HOLLYWOOD TOWERS CONDOMINIUM ASSOCIATION'S BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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LIST OF INTERESTED PARTIES

Petitioners have not separately provided a list of all parties to the proceeding in the court whose judgment is sought to be reviewed. Thus, to assist this Court, Respondent states as follows:

1. The Petitioners are Marshall Spiegel and Carol Spiegel.

2. The Respondents are correctly identified in the caption as Hollywood Towers Condominium Association, an Illinois not-for-profit corporation, and Raymond J., Bonita and Mary Alexis Des Rosiers.

3. This Brief in Opposition is filed only on behalf of Hollywood Towers Condominium Association.

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Respondent, Hollywood Towers Condominium Association, requests that this Court deny the Petition for *Writ of Certiorari* seeking review of an opinion of the Illinois Appellate Court, First District. The Appellate Court's Opinion is reported and appears in the Petition Appendix at 1a-14a. The orders of the trial court are not reported. (Pet. App. 2a).

STATEMENT OF JURISDICTION

The sole question advanced for review by the petition was never presented to the Illinois courts. Thus, this Court cannot properly exercise jurisdiction over this case, pursuant to 28 U.S.C. §1257(a), because these newly presented arguments may not properly be considered by *Writ of Certiorari.*

STATEMENT OF THE CASE

Respondent respectfully opposes the Petition for *Writ of Certiorari.* For the most part, the Petition assails the Illinois judiciary's ruling that Petitioners were barred from rearguing certain alleged "defenses." But, as the Illinois Appellate Court's opinion reveals, Petitioners were not denied the right to present any defenses except those that had previously been adjudicated, at the insistence of Petitioners, in a prior proceeding. Thus, the Illinois court did not deny Petitioners an opportunity to be heard but, rather, denied them a second opportunity to be heard because "there was identity of the causes of action and the circuit judge in the municipal department properly determined that *res judicata* barred re-litigation of those issues." (Pet. App. at 10a.)

Furthermore, although Respondent is cognizant of Petitioners' desire to capture this Court's attention, misstatements are an inappropriate basis on which to grant certiorari and, unfortunately, they continue throughout the Petition.

A. Trial Proceedings And Disposition Of The Case Below.

Few cases that come before this Court have already required the judicial attention and resources of this case. In fact, the matter giving rise to the initial trial court complaint by Petitioners has been before the trial and appellate courts of the State of Illinois since 1993. Indeed, the very dispute now brought before this Court has been considered in no less than four (4) separate Illinois trial court proceedings, nine (9) Illinois appeals, countless motions to reconsider, a federal action and appeal, and three (3) requests for leave to appeal to the Illinois Supreme Court, all of which were brought by Petitioners and all of which were unsuccessful and ultimately decided against them. Because the Petition for *Writ of Certiorari* fails to provide the necessary factual and procedural background for this Court, Respondent believes that certain additional facts are necessary to help understand the basis for and propriety of the Illinois courts' many rulings, as well as demonstrate the absolute lack of merit to this Petition.

By unpublished order, dated April 30, 1996, the Illinois Appellate Court affirmed that (i) the Chicago Residential Landlord & Tenants Ordinance was inapplicable to the relationship between Petitioners and the Association; (ii) that a prior determination that a noise complaint was

baseless was binding on Petitioners; and (iii) that Petitioners could be removed from a residential condominium unit they rented from co-respondents.[1] Petitioners did not seek rehearing of that Order but, instead, filed a petition for leave to appeal to the Illinois Supreme Court. (Case No. 81124). On December 4, 1996, that petition was denied.

In the interim, however, the Illinois Appellate Court chose to publish its April 30, 1996 Order, without any material change other than redenominating the unpublished Order as an Opinion. Incredibly, Petitioners then sought rehearing. Petitioners argued to the Appellate Court that the trial court lacked the requisite jurisdiction to terminate their residency, positing that the judgment in favor of the Association, which extinguished their continuing right to reside at the Association, was void. In an Opinion "modified upon denial of rehearing," the Appellate Court again affirmed. Petitioners then sought rehearing of the Opinion, which had already been modified upon their request for rehearing. The Illinois Appellate Court denied that request. Thereafter, Petitioners sought leave to appeal, for the second time, to the Illinois Supreme Court. (Case No. 82450). For the second time, the Illinois Supreme Court refused to grant leave to appeal.

The proceedings in the Illinois courts make clear that Petitioners were repeatedly afforded the right to present

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[1] The Appellate Court also affirmed the trial court's judgment in favor of Petitioners' lessors, co-respondents, that Petitioners could be evicted. Thus, independent of the Association's action, Petitioners were ordered to vacate their rental residence, which has now been sold to unrelated third parties.

any and every argument in support of their position. However, Petitioners chose to time and again repeat the very same arguments, evidently hoping to eventually find a sympathetic court. Finding none, Petitioners now posit that their due process rights were abridged, never having argued that in the state court. Most telling, Petitioners do not cite to any part of the record suggesting otherwise.

B. Correction Of The Statement In The Petition.

The Opinion of the Illinois Appellate Court correctly sets forth the facts of this case. Indeed, the Opinion accurately depicts the repetitive and baseless nature of Petitioners' claims. In the interest of brevity, Respondent respectfully directs this Court's attention to the Appellate Court's Opinion. However, pursuant to United States Supreme Court Rule 15(2), Respondent brings the following misstatements contained in the Petition to the Court's attention.

Petitioners are far less than candid to claim that "[b]y paying rent . . . the Spiegels were entitled under Illinois law to possess the condominium." (Pet. at 8). The Trial and Appellate Courts specifically recognized that Petitioners had failed to pay $8,450 in back rent. Thus, not only did the Illinois trial court grant judgment on the Association's counter-claim, it separately granted the unit owner and lessor "the Des Rosiers possession of the unit . . . [and] ordered plaintiffs to pay $8,450 in back rent." (Pet. App. 4a). Although the landlord's eviction was affirmed, Petitioners have not questioned that order and, therefore, even if they are able to overturn the judgment in favor of the Association, they cannot have

their unit restored to them. Moreover, Petitioners claim that the Appellate Court "precluded the Spiegels from having any hearing at all." (Pet. at 9). To the contrary, the Appellate Court found that "the Association conducted a hearing . . ." (Pet. App. at 2a) and that Petitioners presented their arguments to the Chancery Court. (Pet. App. at 10a).

REASONS FOR DENYING THE PETITION

I.

This Court Has No Jurisdiction To Consider Petitioners' Arguments.

This Court's review of judgments rendered by state courts is limited to circumstances where a federal question has been *both* raised and decided in the state court below. *Yee v. City of Escondido*, 503 U.S. 519, 523-33 (1992) (refusing to consider due process claims that were not raised or addressed below); *Beck v. Washington*, 369 U.S. 541, 549-53 (1962) ("unbroken line of precedent" refusing to consider issues which petitioner failed to argue in state court). Illinois law is consistent and similarly holds that arguments not presented and preserved in the trial court cannot be presented in the Appellate or Supreme Court. *Eagan v. Chicago Transit Authority*, 158 Ill.2d 527, 534 (1994).

Nevertheless, in this Court, for the first time, Petitioners argue that they have been denied their Fourteenth Amendment due process rights. Significantly and their current claims aside, Petitioners never cited the Fourteenth Amendment or the due process clause to the

Illinois Trial, Appellate, or Supreme Courts. That was, of course, despite the fact that they filed numerous petitions for leave to appeal and motions to reconsider. Further, the only claim ever presented that was even remotely connected to a constitutional attack was that the Trial Court did not have "jurisdiction" to evict Petitioners. However, after modifying its Opinion on rehearing, the Appellate Court concluded that jurisdiction was not lacking and ruled "that [the Illinois Condominium] Act provides that an Association may proceed directly against a tenant for a breach by a tenant of any covenants, rules, regulations or by-laws." (Pet. App. 8a). Thus, for this fundamental reason, Petitioners should not be permitted to now seek review on such a specious constitutional ground.

II.

The Illinois Courts Did *Not* Compromise Petitioners' Right To Due Process.

Petitioners are patently wrong when they assert that their constitutional right to due process was jeopardized by the holdings of the Illinois courts. First, although Petitioners announced that "they were denied a hearing altogether on their expenses and objections." (Petition, p. 9), however, what the Illinois courts prevented Petitioners from doing was *again* seeking a hearing on the very issues which had been previously decided in the context of a declaratory action initiated by Petitioners. Reference to the Appellate Court's Opinion is most telling:

> In their complaint for declaratory judgment, plaintiffs asserted that the association could not maintain an action in forcible entry and detainer

> without complying with the provisions of the ordinance, and that a determination made by the Board of Directors is not binding on them. In the forcible entry detainer action, although the circuit court had already ruled against them on these issues, *plaintiffs asserted the same matter* as their affirmative defenses. (emphasis supplied).

(Petition, App. 10a). Thus, what Petitioners apparently seek is a second hearing. There is, however, no requirement in this Court's jurisprudence requiring multiple hearings on the same issues. Rather, *res judicata* bars the relitigation of matters already decided. *Doe v. Allied Signal, Inc.*, 985 F.2d 908, 913 (7th Cir. 1993).

Further, Petitioners do not—and cannot—allege that they did not have notice and an opportunity to be heard on the issues involved in the Illinois actions. In addition to the court hearings, Petitioners were involved in administrative hearings before the Association's Board of Directors. Due process is amply satisfied by a proceeding in which a party has counsel, an opportunity to be heard and adduce evidence, and an opportunity to cross-examine adverse witnesses. See, *Matthews v. Eldridge*, 424 U.S. 319, 333 (1976). Petitioners having agreed to and, in fact, invoking a process of nonjudicial dispute resolution (i.e., a hearing before the Board), may not then attack the outcome of that process when the decision goes against them. *Commodity Futures Trading Commission v. Schnor*, 478 U.S. 833, 849-50 (1986). Dissatisfaction does not rise to the level of a constitutional challenge nor can it form the basis of a petition for *writ of certiorari*.

III.

Any Review Would Be Advisory In Nature.

Fundamentally, Petitioners' purported constitutional argument is that they dislike the outcome of the many hearings which they initiated over approximately a four (4) year period. Somehow, petitioners hope to raise a constitutional challenge to proceedings which they invoked. Moreover, and Petitioners' doomsday cries aside, Petitioners ignore the fact that the Illinois courts also terminated their possession to the residential unit in favor of their landlord. Phrased somewhat differently, Petitioners do not attack or even question the Court's judgment to evict Petitioners and place their landlord back in possession. Accordingly, any issue which Petitioners seek to raise here is moot because even if the new constitutional challenge to the Association's judgment is sustained, the judgment in favor of the landlord has not been questioned and will stand. Thus, petitioners will not—indeed cannot because of an intervening sale of the unit—be put back in possession. Accordingly, consideration of this matter will have no effect on the parties. This Court should not unnecessarily grant *certiorari* to decide moot cases as any decision here would be wholly advisory and will not affect the rights of the parties. *DeFuris v. Odegaard*, 416 U.S. 312, 319 (1974) (actual controversy must exist at all stages of appellate and *certiorari* reviews). For this further reason, the *Writ of Certiorari* should be denied.

CONCLUSION

Based on the foregoing reasons, Respondent respectfully submits that the *Writ of Certiorari* should be denied.

Respectfully submitted,

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